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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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FCC PUBLIC MEETING PANEL DISCUSSION
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I. HOW CAN THE COMMISSION BEST CREATE REALISTIC OPPORTUNITIES FOR DESIGNATED ENTITIES?

Introduction

- To encourage the successful participation of designated entities in the provision of personal communications services ("PCS"), the Commission must create meaningful opportunities for new entrants. The Commission's challenge is to realize the Congressional directive to promote the participation of small businesses, rural telephone companies, minorities and women in PCS.

- PCS is a capital intensive venture and many companies with significant resources will develop PCS systems. Accordingly, preferential treatment for designated entities is an absolute necessity if opportunity for participation is to be assured.

Preferential Provisions

The Options

- Although the Commission has yet to announce the specific policies to assist designated entities, it has identified a menu of options from which to choose.

- The preference options include spectrum set-asides, tax certificates and the availability of installment payment plans and bidding credits. Each one of these provisions is invaluable to successful designated entity participation.

- Elimination of the previously proposed rules to encourage participation, especially via 20 MHz BTA Blocks, would be disastrous to participation by designated entities. While reexamination of policies and fine-tuning can substantially improve regulatory decisions, the Commission's reconsideration of aspects of the PCS licensing scheme should not extend to review and retrenchment for designated entity opportunities.

Set-Asides

- It has been suggested that the set-aside for small businesses may be in jeopardy. Further, some have

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suggested that minority and gender-based set-asides may be unconstitutional. The Commission must not change its rules during this "fresh look" period to the detriment of designated entities. Each of these set-asides is both necessary and proper. No constitutional issues would be raised by their adoption.

- Indeed, if small businesses, minorities and women all qualify to bid on the set-aside, no constitutionally suspect race-specific set-aside is established. The policy is not one of racial exclusivity.

- Moreover, it is important that the small business set-aside and minority set-aside be distinct preferences. The language of the Budget Act indicates that preferences be adopted independently for each of these groups.

Joint Ventures

- Designated entities must be able to joint venture with other companies offering both telecommunications expertise and capital. Although the Commission has established ownership interest restrictions to prevent designated entity "fronts," the rules must permit financial and managerial arrangements that allow designated entities to compete with companies of significantly greater size.

Ownership Restrictions

- For businesses owned by women and minorities, the current rules are misguided in focusing only on equity ownership and not providing a separate, alternative test based on control. Companies controlled by designated entities, but unable to meet the Commission's equity requirements (50.1%), should be eligible for the preference.

- In other areas, the Commission has recognized that a minority group member need not possess 50.1% of the equity of a business for the business to qualify for minority status. In applying the tax certificate policy to minority acquisitions under the Minority Ownership Policy for the broadcast and cable television industries, the Commission has not required controlling minority group members to hold an equity ownership of 50.1% to qualify the seller or investors for a tax certificate.

Additional Preference Options

- The Commission should also provide for the use of tax certificates by designated entities.

- It has been suggested that, in regard to installment payments, there be a two year moratorium on the principal portion of the payments. Only the interest portion of the payments, therefore, would be tendered during the first two years following the license grant. This benefit is intended to facilitate the construction of PCS infrastructure.

- The Commission should allow exceptions to the cellular PCS eligibility restrictions for cellular licensees holding a non-controlling interest in a minority-controlled PCS business. This will provide minority entrepreneurs the opportunity to acquire wireless communications expertise through cooperative business arrangements.

- The Commission should also consider exempting designated entities from the 20% payment requirement once a bidder successfully bids on a license. The 20% payment requirement is onerous for small businesses and other designated entities.

II. WHAT MARKET AND REGULATORY FACTORS WILL MAKE PCS A VIABLE BUSINESS?

- Although there may be room for disagreement as to the appropriate spectrum allocations and geographic service areas, the Commission has chosen a structure that encompasses 10, 20 and 30 MHz blocks.

- The Competitive Bidding Notice of Proposed Rulemaking has proposed to set-aside Blocks C (20 MHz BTA) and D (10 MHz BTA) for designated entities.

- The Commission must not disturb the 20 MHz set-aside for designated entities. Though a 30 MHz block would provide designated entities greater market opportunities, the Block C set-aside does provide designated entities with a significant opportunity to compete in PCS.

- While the 10 MHz Block provides adequate spectrum for niche services, 20 MHz blocks are more useful.

- It is important for the 20 MHz block to remain adjacent to the MTA licenses to provide for maximum interoperability with wide area PCS operations.

- No matter what the ultimate allocation, it is imperative that the Commission establish set-asides to level the playing field. Unless these set-asides are in place, designated entities will find it virtually impossible to outbid larger competitors seeking to aggregate spectrum in their target markets.

III. WHAT TYPES OF FINANCING WILL SUPPORT PCS?

- One of the greatest challenges facing designated entities will be the procurement of financing. The valuation of PCS licenses continues to be a difficult process in light of the many unknowns that presently exist. Questions about the cost of building PCS infrastructure compound the impact.

- Potential sources of financing will be (1) venture capitalists; (2) Initial Public Offerings; (3) public debt offerings; or (4) commercial bank loans.

- Many venture capitalists are concerned about the viability of designated entities in a highly competitive PCS marketplace. Some have suggested that designated entities avoid the auction process completely.

- The Commission's rules must encourage financial markets to lend money to designated entities to cover PCS start-up and service initiation costs. Unless this encouragement is given, the only opportunities for designated entities may be limited to alliances with larger companies.

- Designated entities should be permitted to offer security interests in their licenses to provide lenders with a sufficient level of comfort in providing funds to finance the construction of PCS.

- Designated entities also should be allowed the flexibility to profit from economically prudent conduct. It is essential that all licensees, including designated entities, be free to engage in aftermarket transactions that will be necessary to bring service to the public.

- **The Commission should not adopt any penalty provision that assumes the illegitimacy of any profit a designated entity is able to realize on the transfer of a license.**

- **The establishment of effective installment payment plans and bidding credits is invaluable to designated entity participation. Further, relief from overburdensome down payments will facilitate entry of designated entities into the PCS marketplace.**

IV. CONCLUSION

- **The advent of PCS holds significant promise for designated entities only if appropriate and necessary preferences are afforded. The Commission must take seriously Congress' directive and establish rules that will provide designated entities with profitable PCS opportunities.**